IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1480 OF 2005

The State of Maharashtra ..Applicant.

V/s.

Shri Umesh Chhagan Chavan ..Respondent.

Shri A.S.Gadkari, APP for the Applicant -State.

CORAM : A.M.KHANWILKAR, J.
DATED : MARCH 14, 2005

PC :-

1. This application takes exception to the order passed by the JMFC, 6th Court, Pune dated 18th December, 2004, remanding the respondent accused to magistrate custody and rejecting the applicant's prayer for further police custody of the respondent accused.

2. The sole reason recorded in the order, which is impugned in this application is that no progress has been made since last police custody. The correctness of this finding is put in issue before this court. It is pointed out that the concerned court has glossed over specific ground stated in the remand application to justify further police custody. Besides, it is the matter of record that three

statements of the accused have been recorded on different dates since 11th December, 2004 till 18th December, 2004 and the version given by the accused in those statements was being inquired into. This aspect has been clearly glossed over by the lower court, is the grievance made in this application.

3. On perusing the record, the argument as canvassed on behalf of the applicant seems to be justified. The record does indicate that three statements of the accused were recorded, during the course of the investigation, since police custody was granted on 11th December, 2004 to 18th December, 2004. It also appears that further investigation about ascertaining the version of the accused was carried out. In that sense, it is not possible to sustain the opinion recorded by the concerned Magistrate that no further progress was made since last police custody. That opinion is to be effaced from the record and as no other reason has been recorded by the lower court, the order as passed cannot be sustained.

4. The learned APP submits that there is additional ground to justify police custody of the respondent accused. It is the matter of record that

the respondent accused is a hardened criminal and involved in at least 13 other criminal cases of similar types. He submits that provisions of the Special Enactment of MOCA has been invoked against the respondent and in view of the provisions contained therein, the concerned Magistrate ought to have permitted the further police custody of the respondent to the investigating agency. It is further submitted that now after the respondent was sent to judicial custody, the investigation reveals that the statement made by the respondent accused that he has no bank account is false, as there is material to indicate that the respondent has his account with Vishweshwar Sahakari Bank, Pune and had operated the same.

5. It is, therefore, submitted that the police custody of the respondent will be necessary to interrogate the Respondent in respect of the abovesaid matter also. In my opinion, the appropriate course is to direct the applicant to apply before the concerned Magistrate for further police custody on the grounds available to the prosecution for the purpose of further interrogation of the respondent accused. If such application is made, the same will have to be considered on its own merits in accordance with law,

uninfluenced by the earlier order passed by the Magistrate on 18th December, 2004, which I have already observed, cannot be sustained.

6. If such application is made by the prosecution before the concerned Magistrate, he shall decide the same on the date when it is presented before him without giving further dates as there is substance in the apprehension expressed on behalf of the prosecution that material time is running out for the prosecution for filing the chargesheet.

7. Application is disposed of in the above terms. Ordered accordingly.

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